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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY GIRRARD
TURNER,

Defendant and Appellant.

B288135

(Los Angeles County
Super. Ct. No. MA072524)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank M. Tavelman, Judge. Affirmed.

Nadezhda M. Habinek, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Anthony Girrard Turner appeals from a judgment of conviction for felony domestic violence and two drug-related offenses entered after a jury trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Information*

Turner was charged in an information with one count of willfully inflicting corporal injury on his girlfriend A.H. (Pen. Code, § 273.5), possessing methamphetamine¹ (Health & Saf. Code, § 11377) and misdemeanor being under the influence of methamphetamine (Health & Saf. Code, § 11550). The information specially alleged that Turner had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12), for which he served a separate prison term within the meaning of Penal Code section 667.5, subdivision (b).

B. *Faretta Waiver*

After repeated admonitions by different bench officers about the pitfalls of self-representation, Turner asserted his Sixth Amendment right under *Faretta v. California* (1975) 422 U.S. 806 to represent himself, and signed an advisement and waiver of right to counsel form. Turner represented himself at the preliminary hearing and at trial.

¹ Because Turner had a prior conviction for attempted murder, this count was charged as a felony. (See Health & Saf. Code, § 11377, subd. (a); Pen. Code, § 667, subd. (e)(2)(C)(iv).)

C. *The Incident*

On the afternoon of August 8, 2017 Richard Loma left a shopping center in the City of Palmdale and walked to his car. As he was driving through the parking lot, he noticed Turner standing over a woman, who was curled up in a fetal position on the ground. Turner was yelling at the woman and punching her face and torso with his fists. The woman was crying and attempting to cover her face with her arms.

Loma stopped his car, called 911,² and continued to watch Turner and the woman for five to 10 minutes while waiting for the police to arrive. At one point, the woman stood up, cowering and crying. Turner struck her again, threw her in the backseat of a silver car with out-of-state license plates, and drove away.

In response to Loma's report, sheriff's deputies pulled over the driver of a silver car with Arizona license plates. Los Angeles County Sheriff's Deputy Jake Garcia first spoke to the female passenger, A.H., and then to Turner, who was the driver. A.H. was shaking, crying, and hyperventilating. She identified Turner as her boyfriend. A.H. told the deputy that after returning to their car at the Palmdale shopping center, Turner began yelling at her and claimed he was God. He hit A.H. three or four times and ripped off her shirt. A.H. fled from the car and ran about 40 feet before Turner caught up with her. He punched A.H. 10 to 15 times in the face and torso, and she fell to the ground. Turner then hit her several more times.³ A.H. also stated Turner had hit

² A recording of Loma's 911 call was played for the jury.

³ At trial, A.H. testified Turner was still her boyfriend. She acknowledged she and Turner had an argument that day, but denied he had hit her. A.H. claimed Turner had wrapped his arms around her, and she ripped her shirt as she moved away.

her on a prior occasion. Deputy Garcia observed A.H.'s mouth, forehead, and arm were red, swollen, and bruised. He photographed her injuries.⁴ A.H. complained of pain to her ribs and torso.

Deputy Garcia conducted a search of the silver car and recovered a small plastic bag with methamphetamine.⁵ A.H. stated Turner had consumed methamphetamine earlier in the day, and the recovered methamphetamine belonged to him.

Prior to being questioned by Deputy Garcia, Turner waived his right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436, 444-445.) Turner told the deputy his name was God, the police were setting him up, and nothing had happened. He was aggressive and uncooperative. Deputy Garcia opined that Turner displayed symptoms of being under the influence of a central nervous system stimulant.

D. *The Verdict and Sentencing*

The jury convicted Turner on all counts. In a bifurcated proceeding the trial court found true the special allegations. The court selected count 1 for domestic violence as the base term and sentenced Turner to the high term of four years, doubled under the three strikes law. On count 2 for possession of methamphetamine the court imposed a 16-month term, calculated as one-third of the two-year middle term, doubled under the three strikes law. The court sentenced Turner on

⁴ The photographs of A.H.'s injuries were shown to the jury.

⁵ A criminalist for the Los Angeles County Sheriff's Department testified the bag contained 0.578 grams of a substance containing methamphetamine.

count 3 for misdemeanor being under the influence of methamphetamine to a concurrent term of 364 days. Finally, the court imposed an additional year for the prior prison term enhancement under Penal Code section 667.5. The court sentenced Turner to an aggregate state prison term of 10 years four months.

Turner filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Turner on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On October 15, 2018 we advised Turner he had 30 days in which to submit any contentions or issues he wished us to consider. On November 9, 2018 Turner filed a supplemental brief in which he argued he was denied due process and a fair trial because Deputy Garcia testified at the preliminary hearing in violation of Penal Code section 872, subdivision (b). Turner also points out Deputy Garcia's testimony was inconsistent with A.H.'s testimony at trial.

Turner's argument that Deputy Garcia was not qualified to testify at the preliminary hearing lacks merit.⁶ Penal Code section 872, subdivision (b), provides in relevant part that, notwithstanding the hearsay rule (Evid. Code, § 1200), at a preliminary hearing "the finding of probable cause may be based in whole or in part upon the sworn testimony of a law

⁶ Because we conclude there was no violation of Penal Code section 872, subdivision (b), we do not address whether Turner forfeited this argument by not objecting to the testimony at the preliminary hearing.

enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted.” Section 872, subdivision (b), requires that any law enforcement officer testifying as to hearsay statements “either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.” Deputy Garcia testified at the preliminary hearing he had been employed by the Los Angeles County Sheriff’s Department for four years and had successfully completed the Peace Officer Standards and Training on testifying at preliminary hearings.

Although Turner is correct that Deputy Garcia’s testimony was inconsistent with A.H.’s testimony as to the domestic violence count, it was for the jury to make the credibility determination. ““We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]” [Citation.] A reversal for insufficient evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support’” the jury’s verdict.” (*People v. Penunuri* (2018) 5 Cal.5th 126, 142, quoting *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Substantial evidence supports the jury’s verdict finding Turner committed domestic violence. (*Penunuri*, at p. 142 [“The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.”].)

We have examined the entire record and are satisfied Turner’s appellate attorney has fully complied with the

responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.

WE CONCUR:

ZELON, Acting P.J.

SEGAL, J.